

Southwestern Bell Telephone

DOCKET FILE COPY ORIGINAL **RECEIVED**

AUG 13 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 12, 1997

Durward D. Dupre
Vice President
Associate General Counsel

Ms. Chris Jines
Director-Federal Regulatory
SBC Communications Inc.
1401 I Street, N.W., Suite 1100
Washington, D.C. 20005

Dear Chris:

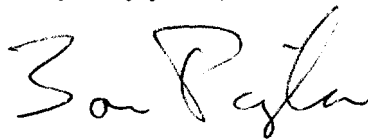
Re: Application for Review of Southwestern Bell Telephone Company, CC
Docket No. 97-158, Transmittal No. 2633

Enclosed please find an original and fourteen (14) copies of the above-referenced pleading to be filed with the Secretary of the Commission on Wednesday, August 13, 1997. Also enclosed is a copy of the pleading to be file-stamped and returned to me.

Additional copies of the pleading are attached to be used as the courtesy copies and one is included for your files.

Please call to confirm that the pleading has been filed. Thank you for your assistance.

Very truly yours,



/s/ Durward D. Dupre

Enclosures

One Bell Center
St. Louis, Missouri 63101

Phone 314 235-4300

No. of Copies rec'd _____
List ABCDE



Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	CC Docket No. 97-158
Southwestern Bell Telephone Company)	Transmittal No. 2633
Tariff F.C.C. No. 73)	

APPLICATION FOR REVIEW OF
SOUTHWESTERN BELL TELEPHONE COMPANY

Southwestern Bell Telephone Company (SWBT), pursuant to Section 1.115 of the rules of the Federal Communications Commission (Commission), hereby respectfully requests that the Commission review the Order Designating Issues For Investigation and vacate that part of the Designation Order¹ that denies the waiver request of SWBT.

I. BACKGROUND

SWBT filed Transmittal No. 2633 on May 5, 1997. This transmittal proposes to add to SWBT's interstate access tariff a new Section 29, "Request for Proposal (RFP)." The tariff language is similar to that which was previously rejected by the Commission and remanded by the U.S. Court of Appeals for the District of Columbia Circuit to the Commission.²

On June 13, 1997, the Common Carrier Bureau (Bureau) suspended Transmittal No. 2633 for five months and noted that an order designating issues for investigation would be forthcoming. On July 14, 1997, the Bureau issued its Designation Order. The Designation Order sets out issues for further comments in this docket.

¹ Southwestern Bell Telephone Company Tariff F.C.C. No. 73, CC Docket No. 97-158, Transmittal No. 2633, Order Designating Issues for Investigation, (DA 97-1472) (released, Common Carrier Bureau, July 14, 1997). (Designation Order).

² Southwestern Bell Telephone Company v. F.C.C., 100 F. 3d 1004 (D.C. Cir. 1996).

The Designation Order also ruled on SWBT's request for waiver embedded in Transmittal No. 2633. The Designation Order states that "SWBT fails to identify each of the particular rules from which it seeks relief and makes no specific showing in its request as to how it meets the legal standards described above for grant of a waiver."³ The Designation Order thus denies the waiver requested by SWBT in Transmittal No. 2633.

II. DENIAL OF SWBT'S WAIVER REQUEST IS PREMATURE.

SWBT's description and justification (D&J) attached to its Transmittal No. 2633 asks for a waiver of the DS-3 ICB Order, or "of any such Commission rule or order so required."⁴ SWBT made the waiver request in this broad fashion due to the unsettled nature of the Commission's rules governing SWBT's RFP tariff filings. The Designation Order admittedly holds open for question whether various rules would conflict with SWBT's Transmittal No. 2633. For example, paragraph 23 of the Designation Order states:

Section 69.3(e)(7) of the Commission's rules requires dominant LECs to offer averaged rates throughout their individual study areas. Section 69.123(c) of the Commission's rules provides that dominant LECs that offer density zone pricing must provide averaged rates within each density zone. We seek comment on whether Transmittal No. 2633 violates Sections 69.3(e)(7) or 69.123(c) of the rules.⁵

³ Designation Order at para. 14.

⁴ Transmittal No. 2633, D&J, at fn. 5. (The Designation Order misquotes this footnote and apparently quotes footnote 5 from the D&J of SWBT's Transmittal No. 2622.)

⁵ Designation Order at para. 23 (footnotes omitted).

Thus, since even the Bureau is unsure as to which rules might affect SWBT's RFP tariff filing, it is entirely inappropriate to reject SWBT's request for waiver on the sole ground that SWBT has not identified each of the particular rules from which it seeks relief.

The better practice would be to allow SWBT's waiver request to remain in effect pending the ruling by the Commission on SWBT's Transmittal No. 2633. If the Commission decides that particular rules or policies are in conflict with SWBT's Transmittal No. 2633, SWBT expects at that time that the Commission would be able to determine whether the record would support a waiver of those rules as well. The Bureau's action in the Designation Order prematurely rejects this approach to SWBT's Transmittal No. 2633 and denies SWBT any opportunity to show the "special circumstances justifying a waiver" that might be appropriate.

Pursuant to Section 1.115(b)(2), the premature denial of SWBT's waiver request is in conflict with statute, regulation, case precedent, and established Commission policy. Further, the premature denial constitutes prejudicial procedural error.

III. CONCLUSION

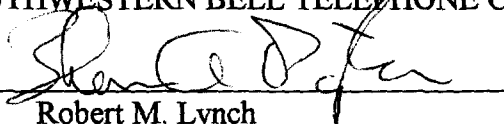
Only upon identification by the Bureau of the precise rules and policies that it may believe to be in conflict with Transmittal No. 2633, and the consideration of the record to determine whether special circumstances exist to waive those rules or policies in this matter, can a

decision be reasonably made on SWBT's waiver request. Thus, SWBT respectfully requests that the Commission vacate that portion of the Designation Order that rejects SWBT's waiver request, pending a final decision in this matter.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY

By



Robert M. Lynch

Durward D. Dupre

Michael J. Zpevak

Thomas A. Pajda

One Bell Center, Room 3520

St. Louis, Missouri 63101

(314) 235-2507

ATTORNEYS FOR SOUTHWESTERN BELL
TELEPHONE COMPANY

August 13, 1997

Certificate of Service

I, Elaine Temper, hereby certify Southwestern Bell Telephone Company's Application for Review of CC Docket No. 97-158, Transmittal No. 2633 has been served this 13th day of August, 1997 to the Parties of Record.

Elaine Temper

Elaine Temper

August 13, 1997

**DON SUSSMAN
REGULATORY ANALYST
MCI
1801 PENNSYLVANIA AVE NW
WASHINGTON DC 20006**

**JAMES SCHLICHTING
CHIEF COMPETITIVE PRICING DIVISION
FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET NW
ROOM 518
WASHINGTON DC 20554**

**ITS INC
1919 M STREET NW
WASHINGTON DC 20054**

**SPRINT COMMUNICATIONS COMPANY L P
LEON M KESTENBAUM
MARYBETH M BANKS
1850 M STREET NW SUITE 1110
WASHINGTON DC 20036**

**AT&T CORP
AVA B KLEINMAN
MARK C ROSENBLUM
SETH S GROSS
295 NORTH MAPLE AVENUE
ROOM 3252J1
BASKING RIDGE NJ 07920**